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MAR 21 2005

OFFICE OF PETITIONS

In re Application of
Shiveley
Application No. 09/851,720
Filed: May 9, 2001
Docket No.: 0188.0009

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: **DECISION ON PETITION**
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This is a decision on the petition under 37 CFR 1.137(b), filed November 19, 2004, seeking revival of the above-identified application.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." Petitioner is advised that this is not a final agency decision.

This application became abandoned for failure to reply to the office action mailed December 5, 2003, to the above-noted correspondence address of record and which set an extendible period for reply of one month. As no extensions of time were obtained, this application became abandoned at midnight on January 5, 2004. The date of abandonment is January 6, 2004. A Notice of Abandonment was mailed October 5, 2004, to the above address, and was returned as undeliverable October 18, 2004.

A grantable petition to revive an abandoned application under 37 CFR 1.137(b) must be accompanied by: (1) the required reply (unless previously filed), which may be met by the filing of a continuing application in a nonprovisional application abandoned for failure to prosecute, but must be the payment of the issue fee or any outstanding balance thereof in an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof; (2) the petition fee required by 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) a terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)). This petition lacks item (3) above.

As to item 3, the statement of unintentional delay should be made by someone associated with the application at the time of abandonment. As background, the declaration/power of attorney filed with this application appointed only Roger D.

Counsel Deron Cook asserts that a change of address was filed on or about June 28, 2004, and includes a copy thereof as Exhibit A, but notes that such was apparently not given any force and effect by the USPTO. Inspection of the copy of Exhibit A reveals that such was a customer number batch update that sought to associate number 26781, several registered practitioners (including Mr. Emerson and also Mr. Cook), and a new correspondence address, with this application. However, such was signed by a Mr. Daniel Thomson, who unfortunately was not of record as noted above and as such the customer number could not be associated with this file and the address (and registered practitioners) properly remained unchanged. See MPEP 601.03:

For the same reason, the change of correspondence address signed by Mr. Cook and filed November 19, 2004, cannot be given any force and effect, though as a courtesy, and as Mr. Emerson is, according to the registry of practitioners, reachable at the address therein given for customer No. 27,681, a courtesy copy of this decision is being mailed to that address.

Any forthcoming renewed petition should be addressed as follows:


By mail:

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By hand: Customer Service Window
Randolph Building 401 Dulany Street
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By fax: (703) 872-9306
ATTN: Office of Petitions

Inquiries related to this decision may be made to the undersigned at (571) 272-3217.



Brian Hearn
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

cc:
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